

These are the tentative rulings for civil law and motion matters set for Friday, June 21, 2019, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Thursday, June 20, 2019. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: All telephone appearances are governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER GLENN M. HOLLEY AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 31, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. M-CV-0069805 In re Burkhart, Garrett**

Defendants Abraamyan Professional Dental Corp., Elmira Abraamyan and Arthur Abraamyan demur to the second amended complaint filed by plaintiff Garrett Burkhart.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The court assumes the truth of all facts properly pleaded, and accepts as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts. *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6. However, the court does not assume the truth of contentions, deductions, or conclusions of facts or law. *Id.*

As a preliminary matter, plaintiff argues that the demurrer should be overruled or stricken as untimely, or because counsel for defendants did not adequately meet and confer prior to filing the demurrer. The court previously issued an order allowing defendants an extension of time to respond to the second amended complaint, to May 24, 2019. Defendants filed and served their demurrer to second amended complaint on May 24, 2019, but the notice of demurrer was unsigned. On May 28, 2019, defendants filed and served an amended notice of demurrer which was signed. Under the circumstances, the court exercises its discretion in considering defendants' demurrer on the merits. Code Civ. Proc. § 473(a)(1); *see also Jackson v. Doe* (2011) 192 Cal.App.4th 742, 749. Further, the court finds that defendants' attempts to meet and confer prior to filing the demurrer were sufficient. See Code Civ. Proc. § 430.41(a)(4).

Defendants' demurrer to the entire second amended complaint is overruled. On its own motion, the court takes judicial notice of the notice of appeal and Order, Decision or Award of the Labor Commissioner, both filed March 22, 2018. These filings sufficiently demonstrate exhaustion of administrative remedies and compliance with the requirements of Labor Code section 98.2.

Defendants' demurrer to the second, third, fourth, ninth, tenth and eleventh causes of action alleged in the second amended complaint is overruled. The Labor Code authorizes the Industrial Welfare Commission (IWC) to establish exemptions relating to requirements for wages and other employment conditions for executive, administrative and professional employees, and the IWC has promulgated wage order No. 4-2001 for this purpose. Cal. Code Regs. tit. 8, § 11040. Based on the allegations of the second amended complaint, the court can determine that plaintiff was employed in a professional capacity as a licensed dentist, earning a monthly salary equivalent to no less than two times the state minimum wage for full time employment. Section 11040, subdivision (1)(A)(3)(a), (d). However, the court cannot conclude based on the allegations of the operative pleading that plaintiff customarily and regularly exercised discretion and independent judgment in the performance of his duties. Section 11040, subdivision (1)(A)(3)(c). Therefore, for the purpose of the demurrer, the court cannot determine that the professional exemption applies.

Defendants' demurrer to the seventh and eighth causes of action alleged in the second amended complaint is sustained without leave to amend. Labor Code section 226.8 does not provide a private right of action to enforce the statute through a direct claim. *Noe v. Superior Court* (2015) 237 Cal.App.4th 316, 334. Plaintiff's request for leave to amend is denied as plaintiff articulates no manner in which the pleading could be amended to change its legal effect. *See Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

Plaintiff's requests for sanctions are denied, as the requests lack any legal or factual basis.

## **2. S-CV-0030314 Belisle, David, et al vs. Centex Homes, et al**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard June 21, 2019, at 8:30 a.m. in Department 3, located at the Historic Courthouse in Auburn.

### Motion to Dismiss

Cross-defendant Lexington Insurance Company ("Lexington") moves to dismiss the cross-complaint filed by Centex Homes pursuant to Code of Civil Procedure section 583.310 and 583.410.

Lexington's motion is denied. Lexington was dismissed from this action on August 23, 2017. Although Lexington purports to move on behalf of defaulted defendants Energetic Painting & Drywall, Inc. and Energetic Lath & Plaster, Inc., Lexington has not intervened on behalf of these parties. Code of Civil Procedure section 583.310 states that "[a]n action shall be brought to trial within five years after the action is commenced against the defendant." Code of Civil Procedure

section 583.360 states that the action shall be dismissed “by the court on its own motion or on motion of the defendant”. The language of the applicable statute does not appear to allow for a motion filed by an entity which is no longer a party to the action.

Nevertheless, upon review of the file in light of the information currently before the court, on its own motion, the court sets an order to show cause re: mandatory dismissal of the second amended cross-complaint filed by Centex Homes on **July 26, 2019, at 8:30 a.m. in Department 3**. Centex Homes is ordered to appear and show cause why the second amended cross-complaint should not be dismissed pursuant to Code of Civil Procedure section 583.310 based on the failure to bring the action to trial or otherwise seek judgment within five years of commencement.

Centex Homes may file and serve a brief opposing the order to show cause on or before July 15, 2019. In opposing the order to show cause, Centex Homes should explain in as much detail as possible any circumstances during which bringing the action to trial or judgment was impossible, impracticable or futile, including during times when defendants were in default. Code Civ. Proc. § 583.340(c); *see also Hughes v. Kimble* (1992) 5 Cal.App.4th 59, 66-69. Any other party may also file and serve a brief in favor of, or in opposition to, the order to show cause on or before July 15, 2019. The court’s tentative ruling procedures shall apply. Local Rule 20.2.3.

**3. S-CV-0038653 Hill, Michelle Lynn vs. Lecona, Raul, et al**

Motion to Quash or Modify Subpoena to Tri Counties Bank

The parties’ requests for judicial notice are granted.

Plaintiff’s objections to the declarations of Lisa Anderson and Julie Keith are overruled. Plaintiff’s objection to defendants’ sur-reply is sustained. The court has not considered defendants’ sur-reply in ruling on this motion.

Plaintiff’s motion to quash subpoena to Tri Counties Bank is granted.

A party may move to quash a deposition subpoena duces tecum where the records sought are not within the permissible scope of discovery. In this case, plaintiff objects to the subpoena on the grounds that it seeks documents in violation of plaintiff’s right to privacy in her financial affairs. A right of privacy exists as to a party’s confidential financial affairs, even when the information sought is admittedly relevant to the litigation. *Cobb v. Superior Court* (1979) 99 Cal.App.3d 543, 550. The party seeking the discovery must show a particularized need for the information sought. *Britt v. Superior Court* (1978) 20 Cal.3d 844, 859-862. Further, discovery will not be ordered if the information may be available from other sources, or through less intrusive means. *Allen v. Superior Court* (1984) 151 Cal.App.3d 447, 449.

Defendants fail to demonstrate a particularized need for the entirety of the information demanded by the subpoena, and fail to demonstrate that information material to particular allegations of the operative pleadings cannot be obtained through less intrusive means. Based on the foregoing, the motion to quash is granted.

### Motion to Quash or Modify Subpoena to Cirrus Design Corporation

The parties' requests for judicial notice are granted.

Plaintiff's objections to the declaration of Raul Lecona is overruled. Plaintiff's objection to defendants' sur-reply is sustained. The court has not considered defendants' sur-reply in ruling on this motion.

Plaintiff's motion to quash subpoena to Cirrus Design Corporation is granted.

A party may move to quash a deposition subpoena duces tecum where the records sought are not within the permissible scope of discovery. In this case, plaintiff objects to the subpoena on the grounds that it seeks documents in violation of plaintiff's right to privacy in her financial affairs. A right of privacy exists as to a party's confidential financial affairs, even when the information sought is admittedly relevant to the litigation. *Cobb v. Superior Court* (1979) 99 Cal.App.3d 543, 550. The party seeking the discovery must show a particularized need for the information sought. *Britt v. Superior Court* (1978) 20 Cal.3d 844, 859-862. Further, discovery will not be ordered if the information may be available from other sources, or through less intrusive means. *Allen v. Superior Court* (1984) 151 Cal.App.3d 447, 449.

Defendants fail to demonstrate a particularized need for the entirety of the information demanded by the subpoena, and fail to demonstrate that information material to particular allegations of the operative pleadings cannot be obtained through less intrusive means. Based on the foregoing, the motion to quash is granted.

### Application for Order to Show Cause re: Contempt

The parties' requests for judicial notice are granted.

Plaintiff's application for an order to show cause re: contempt is denied.

There are both procedural and substantive deficiencies with plaintiff's application. As pointed out by defendants, the application does not include the July 24, 2017, discovery order ("the Order") that is the subject of the requested order to show cause, and plaintiff's request for judicial notice does not comply with the California Rules of Court. More importantly, plaintiff fails to identify the specific language of the Order that has been violated. Plaintiff's argument that the "entirety" of the Order, a two-page document incorporating a 23-page reporter's transcript, has been violated, undermines the notion that a "specific, narrowly drawn order" is at issue. In addition, the proposed order to show cause attached to plaintiff's application is deficient as it fails to identify the specific facts giving rise to the contempt, as well as the specific terms of the Order that were violated. As an order to show cause re: contempt is the equivalent of a criminal complaint, it must be pleaded with specificity.

Plaintiff's application also fails to establish a willful failure to obey the Order by defendant Raul Lecona ("Lecona") and his counsel, Kronick Moskowitz Tiedemann & Girard ("Kronick"). The court does not condone defendants' and counsel's delays in making responsive documents

available for production. However, upon careful review of the evidence in support of and in opposition to the current application, the court concludes that there are insufficient grounds for a finding of contempt against Lecona and Kronick in this instance.

**4. S-CV-0039601 Wong, Naomi, et al vs. Pavik, Bradley T., et al**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard Friday, June 21, 2019, at 8:30 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Petition to Approve Compromise of Disputed Claim of Minor (Bellen Wong)

The petition to approve compromise of disputed claim of minor Bellen Wong is denied without prejudice. The petition is incomplete as petitioner did not complete sections 9, 10 or 11(c). If oral argument is requested, appearance of the minor is excused.

Petition to Approve Compromise of Disputed Claim of Minor (Laurent Wong)

The petition to approve compromise of disputed claim of minor Lauren Wong is denied without prejudice. The petition is incomplete. Although petitioner states in section 11(c) that a copy of the signed settlement agreement is attached and incorporated into the petition, no such attachment has been included with the petition. If oral argument is requested, appearance of the minor is excused.

**5. S-CV-0040389 Kibbe, Pauline vs. S.C.A.R.C., Inc., et al**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard Friday, June 21, 2019, at 8:30 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Demurrer to Second Amended Complaint

Defendants' request for judicial notice is granted.

Defendants S.C.A.R.C., Inc. individually and dba Oak Ridge Healthcare Center ("Oak Ridge"), Jason Pollock ("Pollock") and Valentina Koga ("Koga") demur to the first cause of action for elder abuse and second cause of action for wrongful death alleged in the second amended complaint.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The court assumes the truth of all facts properly pleaded, and accepts as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts. *Evans v. City of*

*Berkeley* (2006) 38 Cal.4th 1, 6. However, the court does not assume the truth of contentions, deductions, or conclusions of facts or law. *Id.*

Moving defendants demur to plaintiff's first cause of action for elder abuse. The Elder Abuse Act provides an independent cause of action for "[p]hysical abuse, neglect, financial abuse, abandonment, isolation, abduction or other treatment with resulting physical harm or pain or mental suffering." Welf. & Inst. Code § 15610.07(a). Abuse can also be [t]he deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering". Welf. & Inst. Code § 15610(b). "Neglect" under the Elder Abuse Act is "[t]he negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise." Welf. & Inst. Code § 15610.57(a)(1). "Neglect includes, but is not limited to, all of the following: [¶] (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter. [¶] (2) Failure to provide medical care for physical and mental health needs.... [¶] (3) Failure to protect from health and safety hazards. [¶] (4) Failure to prevent malnutrition or dehydration." Welf. & Inst. Code § 15610.57(b). The Elder Abuse Act's heightened remedies apply only where it is proved by clear and convincing evidence that the perpetrator is guilty of recklessness, oppression, fraud or malice in commission of the abuse. *Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 405. Oppression, fraud and malice involve intentional, willful, or conscious wrongdoing of a despicable or injurious' nature. Recklessness involves deliberate disregard of the high degree of probability that an injury will occur. *Id.* (int. cit. omit.).

The second amended complaint alleges that defendants' corporate policy and procedures resulted in moving defendants' failure to reposition decedent Pauline Kibbe ("Kibbe"), failure to care for and inspect her skin, failure to maintain a clean sterile environment and equipment, failure to provide assistance moving, failure to provide adequate wound prevention, failure to ensure adequate hydration and failure to render or seek treatment of Kibbe's infection and pressure ulcers. (SAC, ¶ 18.) Plaintiff alleges that when Kibbe was first admitted to Oak Ridge, she had a stage 2 bed sore, which had improved at the time she was transferred to a board and care facility almost three months later. (*Id.*, ¶ 16(C-E).) During Kibbe's first stay at Oak Ridge, she allegedly suffered four falls, but suffered no injury. (*Id.*, ¶ 16(D).) Kibbe was subsequently readmitted to Oak Ridge on November 10, 2016, with a stage 2 pressure sore on her coccyx. (*Id.*, ¶ 16(I).) Ten days later, wound debridement was necessary for an unstageable bed sore. (*Id.*, ¶ 16(J).) By November 24, 2016, Kibbe was admitted to Sutter with a stage 4 bed sore. (*Id.*, ¶ 16(K).) She died on December 5, 2016.

Other than noting that Kibbe fell on four occasions, and the fact that Kibbe suffered from one or more bed sores which ultimately required debridement during Kibbe's second stay at Oak Ridge, plaintiff fails to allege specific facts showing that defendants engaged in neglect as defined by the Elder Abuse Act, or other treatment which resulted in physical harm or suffering to Kibbe. Plaintiff's allegations are conclusory, and plaintiff fails to allege specific facts constituting reckless, fraudulent, malicious or oppressive conduct. *See Carter v. Prime Healthcare Paradise Valley LLC*, *supra*, 198 Cal.App.4th at 410.

Further, to assert an elder abuse claim against a corporate entity, plaintiff must satisfy the standards of Civil Code section 3294(b) regarding the imposition of punitive damages on an

employer based on the acts of an employee. Welf. & Inst. Code § 15657(c). Under Civil Code section 3294(b), an employer will not be liable for punitive damages unless an officer, director or managing agent had advance knowledge of unfitness of the employee, and employed him or her with a conscious disregard of the rights or safety of others, or ratified the wrongful conduct, or was personally guilty of oppression, fraud or malice. The first amended complaint sets forth no specific facts, as opposed to conclusory allegations, which would satisfy the requirements of Welfare and Institutions Code section 15657. The demurrer is sustained as to the first cause of action.

Defendants Pollack and Koga also demur to plaintiff's second cause of action for wrongful death. The court finds that plaintiff has adequately alleged facts supporting the contention that Kibbe's death was caused by the wrongful acts of these defendants. (SAC, ¶¶ 17(D-H), 20.) The demurrer is overruled as to the second cause of action.

The court presumes that the facts alleged in the second amended complaint state the strongest case for plaintiff. *Live Oak Publishing Co. v. Cohagan* (1991) 234 Cal.App.3d 1277, 1286. Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. With respect to the first cause of action for elder abuse, plaintiff has failed to show that it can be amended to change its legal effect. Accordingly, as to this cause of action, the demurrer is sustained without leave to amend.

Defendants shall file and serve their answer to the second amended complaint on or before July 5, 2019.

#### Motion to Strike

Defendants move to strike various allegations in plaintiff's second amended complaint. A party may move to strike the whole pleading or a portion of the pleading. Code Civ. Proc. § 435(b)(1). A motion to strike may be granted to strike irrelevant, false or improper matters, or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. Code Civ. Proc. § 436(a), (b).

The motion is granted in its entirety without leave to amend. As to the phrase "individually and" in paragraphs 5 and 11, plaintiff has previously conceded that S.C.A.R.C., Inc. should be named solely in its capacity as dba Oak Ridge Healthcare Center. As to plaintiff's claim for hospital expenses, requested damages may not include those damages that are recoverable under Code of Civil Procedure section 377.34, including losses or damages sustained or incurred by the decedent prior to death. Code Civ. Proc. § 377.61. Plaintiff's prayers for punitive damages and attorneys' fees are moot in light of the court's ruling on the demurrer. Finally, plaintiff's third cause of action for fraud was added without leave of court.

Defendants shall file and serve their answer to the second amended complaint on or before July 5, 2019.

**6. S-CV-0040797 Fitzmorris-Scarmuzzi, Anne vs. Stone Barn Ranch, et al**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested it shall be heard Friday, June 21, 2019, at 8:30 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion to Strike Answer to Complaint

Plaintiff's request for judicial notice is granted.

Plaintiff's motion to strike defendant's answer to complaint is granted.

A party may file a motion to strike the whole pleading or a portion of a pleading. Code Civ. Proc. § 435(b)(1). A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. Code Civ. Proc. § 436(a), (b). Plaintiff establishes that defendant Promist Misting and Cooling Corporation, a California corporation dba Mistingpros Cooling Corporation's corporate status is forfeited. (Request for Judicial Notice and Declaration of Andrew G. Minney, Exh. A.) A corporation whose powers have been suspended for nonpayment of corporate franchise taxes lacks the capacity to sue and defend in California courts. Rev. & Tax. Code § 23301; *Reed v. Norman* (1957) 48 Cal.2d 338, 342; see also *Bourhis v. Lord* (2013) 56 Cal.4th 320, 324. Since defendant lacks the capacity to sue or defend a suit and has not demonstrated that it will cure this lack of capacity, its pleadings in this action are properly stricken.

The answer filed by defendant Promist Misting and Cooling Corporation, a California corporation dba Mistingpros Cooling Corporation on July 31, 2018, is stricken.

Motion to Strike Answer to Cross-Complaint

Cross-complainant Issac Lawrence's request for judicial notice is granted.

Cross-complainant Issac Lawrence's motion to strike cross-defendant's answer to cross-complaint is granted.

A party may file a motion to strike the whole pleading or a portion of a pleading. Code Civ. Proc. § 435(b)(1). A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. Code Civ. Proc. § 436(a), (b). Cross-complainant establishes that cross-defendant Promist Misting and Cooling Corporation, a California corporation dba Mistingpros Cooling Corporation's corporate status is forfeited. (Request for Judicial Notice and Declaration of Jennifer S. Willis, Exh. A.) A corporation whose powers have been suspended for nonpayment of corporate franchise taxes lacks the capacity to sue and defend in California courts. Rev. & Tax. Code § 23301; *Reed v. Norman* (1957) 48 Cal.2d 338, 342; see also *Bourhis v. Lord* (2013) 56 Cal.4th 320, 324. Since cross-defendant lacks the capacity to sue or defend a suit and has not demonstrated that it will cure this lack of capacity, its pleadings in this action are properly stricken.



The answer filed by cross-defendant Promist Misting and Cooling Corporation, a California corporation dba Mistingpros Cooling Corporation on August 8, 2018, is stricken.

**7. S-CV-0040825 Essential Mech. Svcs., Inc. vs. Pacific Air Cond. & Heating, Inc.**

Motion to Compel Further Responses to Form Interrogatories

Defendants' request for judicial notice is granted.

Defendants' motion to compel further responses to form interrogatories is granted. "Each answer in response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits." Code Civ. Proc. § 2030.220(a). "If an interrogatory cannot be answered completely, it shall be answered to the extent possible." Plaintiff's responses to form interrogatory Nos. 7.1(c), 15.1 and 17.1 are insufficient as plaintiff does not respond completely to the interrogatory. Nor is plaintiff's failure to respond completely to each interrogatory excused by its responses to other discovery requests. Plaintiff shall serve further verified responses to form interrogatory Nos. 7.1(c), 15.1 and 17.1, without objections, on or before July 5, 2019.

Defendants are awarded sanctions from plaintiff in the amount of \$1,160 as the court finds that plaintiff did not act with substantial justification in opposing the motion. Code Civ. Proc. § 2031.310(h).

Motion to Compel Further Responses to Requests for Admissions

Defendants' request for judicial notice is granted.

Defendants' motion to compel further responses to requests for admission is granted. Plaintiff's objections to the subject requests lack merit, and do not justify plaintiff's failure to either admit or deny the requests. Plaintiff shall serve further verified responses to the subject requests for admission, without objections, on or before July 5, 2019.

Defendants are awarded sanctions from plaintiff in the amount of \$1,160 as the court finds that plaintiff did not act with substantial justification in opposing the motion. Code Civ. Proc. § 2033.290(d).

Motion to Compel Further Responses to Request for Production of Documents, Set Three

Defendants' request for judicial notice is granted.

The motion is granted as to Request Nos. 1-9 and 11. Plaintiff's responses to these requests do not comply with the Code of Civil Procedure. Specifically, plaintiff agrees in the response to produce responsive documents, but also states, "[a]ll other documents are in the possession, custody and control of Pacific." This statement creates an ambiguity in the response, in that it is unclear whether plaintiff is withholding certain documents that it believes are in the possession of

defendants, or whether plaintiff is communicating an inability to comply with the request in part, in which case it must comply with Code of Civil Procedure section 2031.230.

The motion is denied as to Request Nos. 10 and 12-21. The court finds plaintiff's responses to these requests to be sufficient based on the requirements of the Code of Civil Procedure.

Plaintiff shall serve further verified responses to Request Nos. 1-9 and 11, without objections, on or before July 5, 2019.

The parties' requests for sanctions are denied.

Motion to Compel Further Responses to Request for Production of Documents, Set Four

Defendants' request for judicial notice is granted.

The motion is granted as to Request Nos. 3, 6-7, 10, 20, 24 and 30. Plaintiff's responses to these requests do not comply with the Code of Civil Procedure. Specifically, plaintiff agrees in the response to produce responsive documents, but also states, "[a]ll other documents are in the possession, custody and control of Pacific." This statement creates an ambiguity in the response, in that it is unclear whether plaintiff is withholding certain documents that it believes are in the possession of defendants, or whether plaintiff is communicating an inability to comply with the request in part, in which case it must comply with Code of Civil Procedure section 2031.230.

The motion is granted as to Request No. 5. Plaintiff's response fails to comply with the Code of Civil Procedure. The request is not limited to an "accurate" Final Balance Sheet as suggested by plaintiff. To the extent plaintiff states an inability to comply with the request, the response must comply with Code of Civil Procedure section 2031.230.

The motion is denied as to Request Nos. 4 and 12-19. The subject requests do not seek documents in any specified form, and therefore the responding party must produce the information either in the form in which it is ordinarily maintained or in a form that is reasonably usable. Code Civ. Proc. § 2031.280(d). Defendants argue that financial data in its native format goes "to the heart of both parties' claims and defenses regarding breach of the APA", but this general statement lacks specific facts justifying production of the information in a format that was not expressly requested.

Plaintiff shall serve further verified responses to Request Nos. 3, 5, 6-7, 10, 20, 24 and 30, without objections, on or before July 5, 2019.

The parties' requests for sanctions is denied.

**8. S-CV-0041147 Kiefer, Conrad E. vs. Northcoast Security, LLC**

The motion to compel further responses to interrogatories and motion to compel further responses to request for production of documents are continued to June 28, 2019, at 8:30 a.m. in Department 31.

**9. S-CV-0041499 Speedboat JV Partners, LLC vs. Capital One, N.A.**

The demurrer to second amended complaint and motion to dissolve preliminary injunction are dropped as no moving papers were filed with the court.

**10. S-CV-0041543 Davidson, Richard vs. All Star Auto, et al**

The motion to be relieved as counsel for defendant Adreia Ikeva Brown dba All Star Auto by Nolan Del Campo, Esq., is granted, effective upon filing of the proof of service of the court's order on defendant.

**11. S-CV-0042393 Kostyuk, Nadia, et al vs. BBV Profit Sharing Plan, a 401K**

The demurrer to second amended complaint and motion to strike are continued to June 28, 2019, at 8:30 a.m. in Department 31.

**12. S-CV-0042619 Riedel, Marc vs. Mulgeci, Miranda, et al**

Plaintiff seeks a preliminary injunction against defendants Miranda Mulgeci ("Mulgeci") and Joe Charity enjoining them from requesting, demanding or otherwise causing the cancellation of Escrow No. 0126010981 with Old Republic Title Company, or from requesting, demanding or otherwise causing a release of the escrow funds to defendants or anyone acting on their behalf, and ordering defendants to direct transfer of any such funds to Ciao Restaurants, LLC, or if they personally receive the escrow funds, ordering defendants to hold the funds in constructive trust for Ciao Restaurants, LLC and to immediately transfer those funds to Ciao Restaurants, LLC.

Plaintiff's application is denied. Plaintiff presents insufficient information to support a determination by the court that the subject escrow funds are the property of Ciao Restaurants, LLC. Escrow documents submitted by plaintiff identify the seller for purposes of the escrow as B.N. Restaurants, Inc., and the buyer as Miranda Mulgeci. The court cannot determine based on the evidence submitted by plaintiff that Mulgeci was acting as an agent for Ciao Restaurants, LLC, in entering into the purchase and sale contract with B.N. Restaurants, Inc.

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